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Supreme Court of the United States

OCTOBER TERM, 1943.

No. **369**

NORMAN BAKER, NORMAN BAKER, INC., A
CORPORATION, AND THELMA YOUNT,
PETITIONERS,

VS.

DORTHA BELLOWS, EXECUTRIX OF THE ESTATE
OF R. A. BELLOWS, DECEASED,
RESPONDENT.

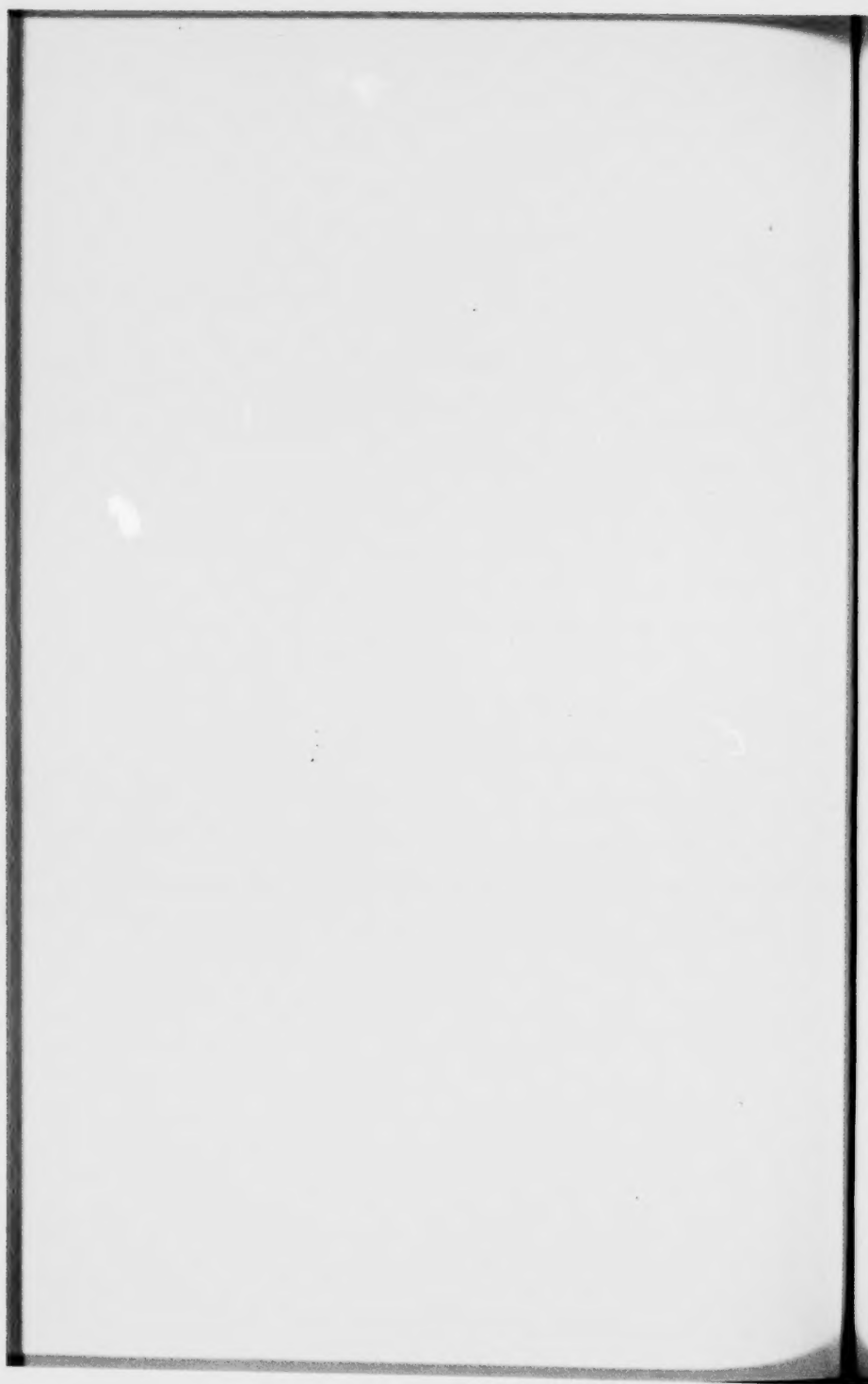
**ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS, AND
BRIEF IN SUPPORT THEREOF.**

By: NORMAN BAKER,
*One of the Petitioners and
Without Counsel.*



INDEX

Pronouncement	1
Jurisdiction	3
Summary of Case.....	4
Summary of Case in Chancery Court.....	6
Petition for Removal.....	7
Opinion of Chancery Court.....	13
Court Opinion.....	14
A Recorded Coincidence.....	18
Appeal to Arkansas Supreme Court and Opinions from Same	19
Minority Opinion.....	20
Majority Opinion.....	25
Reasons Relied Upon for the Allowance of the Writ	36
Argument	40



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To the Honorable Harlan Fiske Stone, Chief Justice of the
Supreme Court of the United States, and to the Asso-
ciate Justices of the Supreme Court of the United
States:

Your petitioner respectfully shows:

PRONOUNCEMENT.

That, Petitioner is without counsel; has been always
able and willing to employ and pay counsel of his choice,

but has been prohibited from direct contact by mail or by interview, with the counsel of his selection, by the officials of the United States Bureau of Prisons and United States Penitentiary at Leavenworth, Kansas. And, petitioner has been denied by said officials the right to receive citations from an attorney, therefore cut off of all opportunity of assistance in securing proper citations to substantiate his conclusions herein, he prays that this court will have forbearance in the matter and excuse errors by virtue of fact that he is ignorant of proper procedure in this case. Petitioner states that this case is of a nefarious nature, tried under unusual conditions, the facts of which would prove startling to this court and ended in petitioner being denied a fair and impartial trial or hearing.

Petitioner contends that because of "Boss Control" and continuous propaganda in press and by radio, created by the orthodox medical profession and "political boss control," that it seemingly is impossible for him to secure justice even to the lesser extent of securing an opinion based upon the overwhelming preponderance of evidence.

Petitioner contends the prejudice and discrimination shown in the majority opinion of the Arkansas Supreme Court, stands as a masterpiece of injustice, and is most correctly described in the minority opinion of the same court, by the Chief Justice (copy attached hereto) thus:

"An opinion is now handed down that reviews evidence most favorable to the plaintiff."

"Nothing is said in the majority opinion concerning Baker's contention (sustained by other testimony) that Bellows' demand for \$25,000 was the price of silence."

"He who comes into equity must come with clean hands" (Pomeroy, Vol. 2 (5th Ed.), p. 90).

"He that hath committed iniquity shall not have equity."

"No right of action shall arise out of an immoral cause."

"* * * that the majority opinion departs radically from the clean hands doctrine."

"I would dismiss the complaint for want of equity" (Chief Justice Griffin Smith).

Because of the unusual makeup of the majority opinion, petitioner prays for this Court's careful perusal because it is outstandingly an opinion, the likes of which is seldom seen because it reviews and features the favorable evidence for the plaintiff even though such evidence was impeached, self-contradictory, and constituted perjury; and *completely* ignored and eliminated the evidence favorable to the defendants, and eliminated the false or perjured evidence of the plaintiff which impeaches plaintiff's testimony.

Petitioner contends that where the surroundings of a trial are not conducive to equality and justice and free from public clamor and prejudice, a fair and impartial trial cannot exist, and one's constitutional rights are made nugatory.

Petitioner contends that aside from the injustices of the pre-trial and trial period in Chancery Court, that the abusive, prejudicial and discriminating statements in both opinions of the Arkansas Supreme Court and the judgment or opinion of the Chancery Court, dehors the record and not based upon the preponderance of the evidence. For affirmation of this contention, petitioner attaches hereto a copy of his "Petition for Reform of the Language" of said opinions.

Petitioner also attaches a copy of his "Petition for Re-hearing" for convenience which will eliminate repetition of the facts.

JURISDICTION.

The jurisdiction of this Court to entertain the application for the writ of certiorari is invoked under Section

240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C., Title 28, Sec. 347).

Appendix XIII, 86 L. Ed., page 792 regulates appeals of State cases, and in this cause the Arkansas Supreme Court's opinion is dated April 26, 1943, and on July 26, 1943, Honorable Justice Reed, of this court, issued an order extending the period of filing this writ, to September 20, 1943, but inadvertently the order was delayed nearly one month before same was mailed to petitioner, and shortens the time for filing to the disadvantage of petitioner under the delayed mail activities at this prison but petitioner strives to have this filed in the time allowed and to simplify same is another reason for attaching copies of the two petitions heretofore referred to.

SUMMARY OF CASE.

Petitioner is a resident of Laredo, Texas, a United States citizen, was temporarily residing at Eureka Springs, Arkansas, and now an inmate of the United States Penitentiary at Leavenworth, Kansas. Because both opinions refer to the trial whereby petitioner was convicted, he believes it necessary to briefly mention the facts of same as follows:

Petitioner, plaintiff and Dr. Statler and five others were indicted; five defendants dismissed and the three mentioned were convicted. *U. S. v. Baker et al.* (115 F. 2d 533), United States District Court, Little Rock, Arkansas, for alleged violation of 18 U. S. C. A. 338 (use of the mails to defraud). Defendants pleaded "not guilty."

Said case was not fully adjudicated when the three opinions (trial court—Arkansas Sup. Ct.) were written, thus petitioner was pre-judged.

Jury tampering was discovered by Burns Detectives and Habeas Corpus case commenced. A petition to the Eighth Circuit Court of Appeals was made, accepted, filed, and denied. Petitioner lost his rights to appeal to

this court upon same by writ of certiorari because prison officials would not permit him to employ an attorney by direct communications or to directly correspond with the attorney who had charge of his files, exhibits and data necessary for said appeal. Thus justice was again obstructed and *petitioner denied his rights to the appeal to this court*. The matter is not as yet fully finished and another appeal will be made.

Therefore any reference to the guilt or innocence of petitioner who was convicted on a plea of "not guilty," as was done in the aforesaid opinions, constitutes prejudgment of petitioner and an injustice.

The three defendants were committed to jail, *denied bond*. Appeal of case and appeal for bond was taken. Plaintiff Bellows and Dr. Statler were later granted bond and petitioner was refused bail because of false arguments of the United States District Attorneys.

In jail, all three defendants were together in one cell. Plaintiff sought a cell change and then attempted to extort \$50,000 from petitioner (See pages 13-14, Petition for Rehearing, attached). Petitioner refused "pay off," and threatened indictment of plaintiff for extortion, but delayed same because case was on appeal and desired to avoid quarrel between defendants in face of expected new trial (That was done on advice of attorneys).

Plaintiff Bellows, afterwards was released on bail and petitioner refused bail, remained in jail. The case was on appeal and petitioner had appealed for bond three times but refused because of false arguments of the United States District attorneys, who were prejudiced.

Plaintiff waited until after appeal of case was affirmed, and at about time petitioner was to be taken to prison from the jail, he filed this complaint and secured service upon petitioner in *this civil case*, while petitioner was a Federal prisoner by service of summons through county sheriff's office at Pine Bluff, Arkansas, to which jail, petitioner had been transferred.

Petitioner contends said service of summons was illegal because it was summons of a State civil case upon a Federal prisoner, and as a Federal prisoner the United States Marshal's office denied petitioner an interview with attorneys; whisked him away to prison, even prohibiting him to phone the attorneys who were awaiting at local hotel for the next day on which they had an appointment with petitioner. United States Deputy Marshal Fred Bradley and Deputy Purvis were the ones who did same.

Further, at the penitentiary, officials refused to permit petitioner to attend court at the trial, refused him permission to testify at the trial.

Therefore, is it justice to permit service of summons upon a Federal prisoner for a civil state case, knowing that Federal rules prohibit the prisoner from attending court and to personally testify in his own behalf and face his accusers and witnesses.

SUMMARY OF CASE IN CHANCERY COURT.

This action was begun by R. A. Bellows by filing his complaint in equity, on February 28, 1941, in Carroll Chancery Court, before Hon. Lee Seamster, Chancellor.

Bellows died April 14, 1942, while in prison, and his widow, Dortha Bellows, Executrix, was substituted as plaintiff (Tr. 114).

The complaint (Tr. 2) is complicated, indefinite and self-contradictory, and involved nine defendants, in various states and a foreign country, namely:

Norman Baker, Thelma Yount, N. L. Fisher, Irma Baker, Norman Baker, Inc., of Iowa.

C. I. A., Inc., (of Mexico).

Globe Advertising Agency, Inc., of Texas.

National Surety Co., of New York.

The decision or judgment of the Chancery Court eliminated all defendants except Thelma Yount, Norman Baker and Norman Baker, Inc.

Defendants filed "Petition for Removal" from the Chancery Court of Carroll County to the United States District Court, as follows:

In the Chancery Court of Carroll County, Arkansas, Western Division. R. A. Bellows, Plaintiff, vs. Norman Baker, Thelma Yount, H. L. Fisher, Irma Baker, Norman Baker Investment Co., Norman Baker, Inc., C. I. A., Inc. (Compania Industrial Universal), Globe Advertising Agency, Inc., and National Surety Co., Defendants. No. 1465.

Petition for Removal.

Come the defendants, Thelma Yount, Irma Baker, Norman Baker Investment Co., C. I. A., Inc. (Compania Industrial Universal), Globe Advertising Agency, Inc., referred to in the complaint as "Globe Advertising Co., Inc.," and respectfully represent:

I.

That this cause was filed in this Honorable Court February 28, 1941, and that the time to plead, answer, or demur to the same has not expired under the law of this State.

II.

That the suit is of a civil nature of which the District Courts of the United States have original jurisdiction.

III.

That the matter in controversy exceeds the sum of three thousand dollars (\$3,000), exclusive of interest and costs.

IV.

That at the time of the commencement of this suit and since that time plaintiff was and is a citizen and resident of Arkansas, County of Carroll in the said State, and defendant, Thelma Yount, was and is a citizen and resident of the State of Texas, County of Webb; defendant Irma Baker was and is a citizen and resident of Iowa, Muscatine County; that the Norman Baker Investment Company was and is a corporation organized and existing under the laws of the State of Iowa having its principal place of business in Muscatine County, Iowa, that the Compania Industrial Universal, S. A. de Mexico, referred to in the complaint as "C. I. A., Inc.," is an alien, being a corporation organized under the laws of the Republic of Mexico, which is therefore, a citizen of the Republic of Mexico, State of Tamaulipas; and the Globe Advertising Agency, Inc., is a corporation organized under the laws of the State of Texas with its principal place of business at Laredo, Texas, and, therefore, a citizen of the State of Texas.

V.

That there are in the alleged cause of action controversies wholly separable and wholly between citizens of different states and as such can be tried and fully determined between them as citizens of different states without affecting the interest of the other defendants.

VI.

That the separable controversies above referred to are as follows:

(a) The controversy between plaintiff, a citizen of Arkansas, and Thelma Yount, a citizen of Texas, which is based upon an alleged fraudulent conveyance between Norman Baker, Inc., and the said Thelma Yount, in which the said Norman Baker, Inc., parted with all of its interest in the property described in

the said complaint a copy of which is attached hereto, marked exhibit "A," and made a part hereof, and, having parted with all its interest, the said Norman Baker, Inc., is no longer a necessary party to the controversy between plaintiff and Thelma Yount.

(b) The allegations by the plaintiff that the defendants, except Norman Baker, are legal trustees for the said Norman Baker, constitute controversies between the plaintiff and each of the individual defendants, wholly separable each from the other, involving citizens of different states.

(c) The allegations as to discovery by the plaintiff against each of the defendants, all of which are separable controversies each from the other, and which, as to the nonresident defendants, are controversies between citizens of different states.

(d) The application for a writ of injunction restraining the several defendants from disposing of any of their properties which controversies are separable each from the other; and as to the nonresident defendants constitute controversies between citizens of different states.

(e) The application by the plaintiff for the appointment of a receiver for the properties described in the said complaint, the title to which is now held by Thelma Yount, which controversy is wholly separable from the other controversies involved herein and constitutes a controversy between the plaintiff, a citizen of the State of Arkansas, and Thelma Yount, a citizen of the State of Texas.

(f) The allegations of the plaintiff asking for an accounting by the several defendants, which are separable controversies between the plaintiff and each individual defendant, and as to the nonresident defendants constitute controversies between plaintiff and citizens of different states.

(g) The claims of the plaintiff to the \$5,000 in possession of National Surety Company, which is a controversy wholly separable from the controversies set forth in a, b, c, d, e, and f, herein.

(h) The controversy between the plaintiff and defendant, Norman Baker, in which a judgment at law is sought is wholly separable from the controversies set forth in a, b, c, d, e, f, and g herein.

VII.

That all of the claims of the plaintiff referred to as controversies in paragraph VI a, b, c, d, e, f, g, and h, are controverted by petitioners and will be formally denied by the several defendants within the proper time for pleading as provided by law.

VIII.

Petitioners, reserving their right to object to the jurisdiction of this court or of the court to which this cause may be removed over the persons of the petitioners, enter their appearance solely for the purpose of filing this their petition of removal.

IX.

The petitioners herewith file a good and sufficient bond as required by the statute in such cases, conditioned that they will within thirty days from the date of filing of this petition, enter in the United States District Court for the Western District of Arkansas a certified copy of the record in this cause and for the payment of all costs which may be awarded by the said United States District Court if the said court should hold that this suit was wrongfully and improperly removed thereto.

X.

That written notice of the filing of this petition for removal has been served upon the plaintiff's attorneys according to the statute in such cases made and provided.

XI.

Wherefore, petitioners pray that the court proceed no further herein, except to make an order of removal of

this cause to the United States District Court for the Western District of Arkansas, as required by law, and accept this bond herein presented and directing a certified copy of the record herein to be made and certified to the said District Court as provided by law.

A. G. Bush,
Davenport, Iowa,
Charles A. Walls,
Lonoke, Arkansas,
Lee Cazort, Jr.,
Little Rock, Arkansas,
Attorneys for Petitioners.

This Petition was denied. It was handled by attorneys for the other defendants and being a federal prisoner, denied permission of interview at the jail before whisked away to prison as heretofore stated, petitioner was forced to "ride along with all defendants," using their attorneys because having been denied the interview in jail as heretofore stated, could not engage a separate attorney, whereas, he was the main factor as plaintiff alleged it was the petitioner and only he, who made the promise to pay. Petitioner was advised that *no appeal could be taken* from this denial.

Petitioner asked for "severance" in the case and was unable to secure same because of being without separate attorney.

Petitioner contends he should have been accorded a change of venue, as cause was for over \$3,000.

Obviously, with petitioner *refused permission to attend trial by the Federal officials* he was forced to testify by depositions, in prison, before guards, without a Justice sitting at the hearing to whom objections could be made, and under a nervous, intimidating environment, *without any of his file data, exhibits, any other evidence, he was unable to testify for his full protection.*

Note: Prison records will show that other inmates have been taken out to testify in state cases and petitioner

was always willing to pay the expenses of guards to take him to court. *Why was petitioner discriminated against?*

Furthermore, at said taking of deposition, plaintiff's attorneys "run wild" unmindful of objection and unethically established a record using *Illegal Evidence* (see pages 3-4-5 of "Appellants' Petition and Argument for Re-hearing") attached.

The complaint alleged that all the corporation defendants (all of which plaintiff was an officer of) were "only Norman Baker in disguise, and that petitioner, "promised" to pay plaintiff \$25,000. It alleges only the petitioner made the promise. Plaintiff alleges in said complaint that only Norman Baker owned all the stock in all said corporations, that defendants Fisher, Yount and Irma Baker were stockholders in disguise for petitioner, *that he the plaintiff held no stock in same.*

The complaint is complicated, indefinite and self-contradictory, and perjured or false statements of plaintiff are conspicuously shown by the evidence.

Complaint shows that the Norman Baker, Inc., borrowed \$30,000 in cash from Thelma Yount and gave notes and mortgage on properties of said corporation as security. Said loan was negotiated by plaintiff while he was an executive officer of said corporation, and all notes and mortgages were executed and signed by the plaintiff. Therefore if any fraud was materialized, it was done by the plaintiff, who in his complaint alleges it was a fraudulent transfer, *Unclean hands!*

The answer to said complaint by defendants denies any promise to pay, or that any amount was due, or that mortgage was fraudulent, or that petitioner "owned all" the corporation.

The answer to said complaint by defendants denies any promise to pay, or that any amount was due, or that mortgage was fraudulent, or that petitioner "owned all" the corporation.

The evidence of the trial showed that plaintiff attempted to extort \$50,000 from petitioner, that petitioner

threatened plaintiff with indictment for extortion, but did not do so because of sympathy for plaintiff in his mental and poor physical condition (See pages 13-14 Petition for Rehearing).

That plaintiff by a ruse, extorted \$500 from Miss Thelma Yount.

That plaintiff did own stock in the defendant corporation and had subscribed for 2 shares of stock in the Norman Baker, Inc., of Arkansas but only paid \$10 per share as payment and the corporation held the stock until fully paid for and that said stock was never paid for, never delivered to plaintiff. That plaintiff had, years before brought suit for 40 odd shares of stock in the Baker Investment Co., Inc., claiming he fully paid for same in the Iowa corporation, thus showing him as a perjurer by display of the court records of said suit, brought years ago.

Plaintiff first claimed petitioner promised to pay him \$25,000 "just because he wanted to," then testified the \$25,000 was for the value of his 2 shares in the Norman Baker, Inc., an insolvent corporation and his stock never was delivered to him because it was never paid for and was held in the corporation's safe awaiting full payment.

OPINION OF CHANCERY COURT.

The opinion of the Chancery Court, from which the appeal to the Arkansas Supreme Court, follows:

Petitioner states that evidence plainly shows in detail the legal formation of every corporation which this opinion states were all owned by petitioner, and that evidence *stands uncontradicted*. Thus the following opinion combines prejudice, discrimination and completely ignores the uncontradicted evidence in behalf of defendants, as follows:

In the Chancery Court of Carroll County, Arkansas. R. A. Bellows, Plaintiff, vs. Norman Baker et al., Defendants.

Court Opinion.

It would be an enormous task to undertake the review of all the evidence in this case; most is immaterial and not admissible. The facts, as I understand them, are that Norman Baker, while engaged in many activities and on advice of his lawyers in Iowa, incorporated by separate corporations his many separate activities.

When he came to Eureka Springs and purchased the Crescent Hotel to be used as a hospital, he had that institution incorporated as the Norman Baker, Inc. He already had other corporations to handle the advertising and radio station which he had already used in operating other hospitals that he operated in a similar manner, at one time or another, at Laredo, Texas, and one at Muscatine, Iowa.

It is the custom of Mr. Baker to have stock issued to his sister and or some of his employees. In the formation of Norman Baker, Inc., the corporation that was to operate the hospital at Eureka Springs, first enough stock was issued to make the corporation legal in the beginning. Additional stock was issued later and the stock holders were changed as desired.

Norman Baker was the holder of a formula or formulas for the treatment of cancer. He is not a licensed doctor, and to put his method of treatment to any use it was necessary for him to employ licensed doctors to administer the treatments. The whole set-up shows that Norman Baker is in a way a financial genius. He conducted the whole show, through his employees and in the name, at times, of his different corporations. It was possible for him to show on the books of his American corporations a loss, and have the funds appear to be transferred to his Mexican corporation, and still keep the income in his pocket. This is evidenced by the fact that after his indictment at Little Rock, in September, 1939, he had cash

in Eureka Springs \$472,000, and to avoid the possibility of having that much money found here, he secretly caused it to be taken to Old Mexico and delivered to Thelma Yount, one of his trusted employees and no doubt his financial confident. It is strange that dividends were never paid by any of his corporations. They would operate so long as needed and surrender their shares. His lawyer keeps all these records for his corporations. More than \$100,000 of this money delivered to Thelma Yount in Mexico was turned over to Fenner & Beam, brokers for investments in various stocks of corporations in this country in the name of his Mexican corporation.

They admit now owning in this way at least \$25,000 worth of such stocks. The rest of the money is somewhere in hiding and no doubt in a place where only Mr. Baker and some one of his trusted employees, possibly Miss Yount, can get to it. This money was evidently a part of the profit Norman Baker had made from the patients of Norman Baker, Inc. I say that because of the enormous amount of money received from the patients at Eureka Springs, as compared with the legitimate expenses in conducting the enterprise.

As plaintiff claims in this suit, he was induced to leave Iowa and come to Eureka Springs by Norman Baker. He was to receive a fixed salary and an interest in the business, as evidence of this fact he was given two shares of stock in the original corporation, one share issued to himself, and one share to his wife. At that time only a few shares had been issued. After Norman Baker, Dr. Statler, R. A. Bellows and others were indicted, Norman Baker financed the trial in the Federal Court for all of them, in the name of Norman Baker, Inc. However, Thelma Yount was the employee who managed the financial part and produced the money with which to conduct the defense.

There is some evidence that some of the parties were acquitted because they owned no stock and were not officers of Norman Baker, Inc. The plaintiff, Bellows, and

Dr. Statler both owned stock and were officers of the Corporation.

After their conviction and while Dr. Statler, R. A. Bellows and Norman Baker were confined in jail in Little Rock awaiting the result of their appeal from such conviction, Mr. Bellows, now deceased, who had been convicted, had no money and at a meeting where he and his wife, Dr. Statler and wife and Norman Baker and Thelma Yount were present, the matter was brought to a head and R. A. Bellows, who had helped to carry to Old Mexico the \$472,000, demanded a settlement of his interest in the business of Norman Baker, Inc.

Norman Baker wanted to know how much he wanted, and as to plaintiff's claim, Bellows demanded \$25,000 and Baker replied that that amount was reasonable, and then and there directed Thelma Yount to take care of it and not bother him any more about it. That occurred in February, and some time afterwards the Bellows stock, which was the only evidence in writing that indicated Bellows had any interest in the business, was transferred to Norman Baker. Bellows was notified by letter, dated May 6th, that he had been removed from office, and that he was no longer connected with the corporation, as of April 27, 1940.

Thelma Yount gave R. A. Bellows \$500 at one time that he says was to apply on this debt. She claims differently. When the Appellate Court authorized bond for Bellows, on or about March 28th, 1940, in the sum of \$5,000, the preponderance of the evidence shows that Thelma Yount told Bellows not to worry, that he had that money coming to him and she would put it up. Norman Baker had ordered her to settle that previously. She did put up the money and the bond company issued to him a receipt showing that the collateral belonged to him. This receipt he kept until one of his lawyers in this case advised him that no advantage could be had in keeping it. There is a dispute of course as to this transaction.

On or about the 9th or 10th of May telegrams were exchanged between Norman Baker, Inc., and Globe Advertising Co. about an alleged claim for advertising, and they might have all been written or dictated by the same person. Mr. Baker at all times had the services of a lawyer, H. L. Fisher, to keep the records straight. Then mortgages and later deeds were executed and the title to all the real estate of Norman Baker, Inc., is now in Thelma Yount, the person who was to settle with plaintiff. As to the legal ability, the Court finds that the statute of fraud on the question of the sale of stock does not apply because the transfer of the stock and part payments made either or both take the transaction out of the statute of fraud.

A promise to pay is not binding for a past or executed consideration unless the consideration was done or performed at the request of the party promising. In this case Norman Baker had not only requested plaintiff to perform the services, but had agreed to see that he was compensated therefor.

As to the validity of the consideration, I find that at the time of the promise to pay, the plaintiff had a claim against the defendant, Norman Baker, which he was asserting. The amount of the claim was not determined until the agreement to pay was made. The Court holds that it was a valid consideration. The value of the two shares of stock in Norman Baker, Inc., would not necessarily have to be the same as the amount agreed upon. The additional element of the amount of money Norman Baker had made out of the proposition, and taking into consideration the number of parties interested and the amounts involved, make the Court think the amount is a very equitable settlement. The plaintiff and his family were then suffering the penalties of his connection with the transaction. Norman Baker had the money.

Judgment will be rendered in favor of the Executrix against Norman Baker and Norman Baker, Inc., for \$24,500, and the Clerk will pay to her the \$5,000 in hands put up

by Thelma Yount to secure R. A. Bellows' bond. The attachments and garnishment are sustained and the Clerk is ordered to pay the balance in his hands returned from other bonds in the sum of \$3,935.25, said amounts to be credited upon the above judgment, and the judgment is declared a lien on the land described, and if the amount be not paid within 30 days a decree of foreclosure and order of sale of said lands is ordered to satisfy said judgment.

Signed: Lee Seamster.

A RECORDED COINCIDENCE.

1. Plaintiff and petitioner were inmates in the United States Penitentiary at Leavenworth, Kansas, at the same time. Plaintiff wrote an application for pardon in which he alleged he had no funds, but owned his home and could and would mortgage same for about \$800 to buy a newsstand or a local oil station with tourist cabins so he and his wife could get along. *This was done long before the trial of this cause in Chancery Court.*

2. Plaintiff approached petitioners in prison, asked for money as he needed it for his wife and child. Petitioner through sympathy offered to help his wife and child while he was in prison. Plaintiff stated he wanted to, but couldn't dismiss the case as he had a contract with two attorneys who were to receive 50% of the judgment, that said attorneys "had things fixed" so that full amount of \$25,000 less the \$500 he secured from Thelma Yount, would be collected by judgment for full amount, but that he couldn't wait until case was fully tried and desired to dismiss suit from petitioner. On his behalf petitioner wrote to Attorney A. G. Bush, Kahl Building, Davenport, Iowa, for advice for plaintiff regarding if he could legally dismiss suit without consent of his attorneys. Mr. Bush advised he could do so, that attorneys could sue him. Petition showed said letter to plaintiff.

Later, before matter was ended, plaintiff, because of his health, was transferred to the Federal Medical Center or prison at Springfield, Missouri, where he died April 14, 1942.

An observer will notice that plaintiff's death was April 14, 1942, the trial of the cause was months later, not until June 9, 1942, still said plaintiff had just recently before death stated in his parole application that he "had no funds," still in his "will," as filed in court, drawn at the Springfield prison, many months before the trial, "willed" \$2,000 each to two children, total \$4,000, balance to his wife. The trial judgment was in full amount sued for, \$24,500 as he had predicted to petitioner.

The evidence of this affair is shown by a letter or "note" delivered by a witness to said plaintiff (Abs. of Record, page 40, Exhibit "F").

APPEAL TO ARKANSAS SUPREME COURT AND OPINIONS FROM SAME.

Petitioner, in presenting the certified copies of the minority and majority opinions following, prays that this court will observe carefully the condemnation of the majority opinion as stated in the minority opinion, for compiling the evidence favorable to the plaintiff and "forgetting" presumably, the evidence of the defendants.

Further, petitioner prays the court will observe the assumption of both opinions; the pre-judgment of defendants and objectionable, unethical and damaging statements against the reputations of the corporations and individual defendants whose future business activities and credit ratings are seriously affected by these pre-judgments, by reflection to the case of *U. S. v. Baker et al.*, before same was fully adjudicated, and because jury tampering as means of conviction was resorted to by the Federal officials as now stands, as a record in the Federal Courts in the case of *U. S. v. Baker et al.*

Minority Opinion.

In the Supreme Court of Arkansas, March 1, 1943. Baker v. Bellows' Executrix. No. 138.

Griffin Smith, C. J. (dissenting).

Briefs and the abstract contain 741 pages of printed matter. The record is far more voluminous. The controversy was submitted on oral argument February 22. An opinion is now handed down that reviews evidence most favorable to the plaintiff below. This is because it is thought that somewhere in that twilight zone where fact challenges fact, appellee's testimony has, in *weight*, overcome that offered by appellants. Hence, it is said, a *preponderance* lies on the designated side of an imaginary line judges endeavor to identify and more clearly define. Result is that the reward of litigation goes to him whose diligence has overcome the so-called "balance." Transition from the nebulous to the *juridical absolute* then occurs.

A statesman whose brilliant mind and forceful character attracted national attention was murdered because he wrote an editorial entitled, "Across the Muddy Chasm." The theme is suggestive of the controversy between men like Norman Baker and R. A. Bellows—men who by virtue of stratagem and conscienceless deception foisted upon hopeful sufferers an alleged "cure" for cancer which was later defined by the government as the handiwork of charlatans. Exposure did not come until thousands had been victimized as they walked through the valley of the shadow of death. Those comprising this army of the diseased hoped against hope that the self-styled miracle worker from Iowa—the unethical advertiser who was driven into Mexico, but who used Eureka Springs as a base for profits—might do for them what modern medicine, surgery and science had failed to completely accomplish.

Baker was sent to prison. Bellows was found guilty of using the mails to defraud, but died after testimony in this suit had been taken.

Baker and Bellows had been associated in various ventures for more than fifteen years. After 1918 Bellows was employed as credit manager for stores operated in New York, Akron, Indianapolis, Grand Rapids, and elsewhere—eight separate assignments as the head of important enterprises. Finally he went to Muscatine as manager of a clothing company. In 1926 he became associated with Baker, who operated a large retail store at Muscatine. At the expiration of nine months Bellows was retained as manager for Baker's extensive enterprises, including an oil station, radio broadcasting plant, a retail store at Davenport, a factory, printing shop, and other activities.

In appellants' reply brief it is stated that Baker—admittedly a shrewd business man—sent Bellows to Kansas City “to be cured of a cancer” and to investigate a treatment administered by Dr. Ozias. There must have been a favorable report on financial possibilities of the Ozias process, for immediately after Bellows returned, Baker opened his “hospital” at Muscatine. This occurred in December, 1929. Bellows was superintendent. At federal court trial in Little Rock Bellows swore he had never been a stockholder in the company just mentioned. It developed, however, that in 1932 he filed suit at Muscatine to replevy fifty-four shares of stock in Norman Baker Investment Company, and swore that he had paid for the shares and they were delivered to him.

While suprintendent of the Baker hospital at Muscatine, Bellows was defendant in a suit brought to enjoin him and others from practicing medicine without license. The supreme court extended the interdiction to Baker, who had not been restrained by the district court. Baker then leased the property to Dr. Potter. Bellows, in respect of his services, “commuted” between Potter and Baker, working for each. Dr. Statler operated the Baker hospital at Muscatine under a conditional lease, but the contract was cancelled in 1932.

The charge against Baker, Bellows, and a Miss Amiss was that they were fraudulently practicing medicine. It constituted a felony under Iowa laws. In the trial from which the instant appeal comes Bellows was asked: "And Mr. Baker entered a plea of guilty and 'took the rap' to let you and Miss Amiss and the others out, didn't he?" Answer: "That's right."

Bellows also testified he " * * * thought the charges were juggled around so Baker could pay a thousand-dollar fine and spend a day in jail."

In the face of this record and other facts to be mentioned later, I involuntarily recoil from the majority's declaration that "*Bellows' act in carrying over half a million dollars for Baker from Eureka Springs to Laredo, after the indictment, was the act of an honest and faithful servant and does not comport with the actions of a crook.*"

This surprising statement by the court, I am frank to say, has left me in bewilderment. The status becomes accentuated when it is remembered that the mortgage Thelma Yount procured on the Eureka Springs realty was executed by Bellows. In May, 1939, \$5,000 was ostensibly borrowed of Thelma. In June \$5,000 more of Thelma's money was loaned, with an additional \$20,000 in September. These transactions, *prima facie*, were consummated by Bellows, who signed the notes and computed interest. When the larger sum was advanced, the two \$5,000 items were combined with the \$20,000 and a note executed for \$30,000. This is the note secured by a mortgage which Bellows, as secretary, signed.

The majority opinion recognizes and gives effect to the naive explanation by Bellows that he, in the capacity of "honest and faithful servant," carried \$572,000 in a money belt from Eureka Springs to Laredo and was utterly oblivious to any suspicion that the leather around his waist was the container of currency destined for a lock-box. It was merely a circumstance, let us presume, that while in jail at Little Rock this servant whose fidelity

remained unimpaired suddenly realized that the time had come for an accounting; that he should collect for worthless stock from which value had been syphoned by Bellows himself when as a co-conspirator he denuded the Eureka Springs treasury of assets.

There are many transactions shedding light on the close association between Baker, Bellows, Statler, and Thelma. All were equally enmeshed in transparent schemes to wrest money from cancer sufferers.

"But that I am forbid to tell the secret of my prison-house, I could a tale unfold whose lightest word would harrow up thy soul. * * *" This dramatic nocturnal declaration to the Prince of Denmark, coming from a ghost in front of Elsinore castle, is no stranger than Bellows' version of his contract with Baker, made in the prison-house at Little Rock.

Nothing is said in the majority opinion concerning Baker's contention (sustained by other testimony) that Bellows' demand for \$25,000 was the price of silence. According to this evidence Bellows threatened to reveal to federal treasury authorities certain information that would affect income tax returns. This may, or may not, be true. But why should the soiled linen tendered by one group of manipulators be accepted at the cleaners in preference to that of others similarly situated? Prison walls and locked steel doors are not conducive to comradeship, and it is not strange that while awaiting trial or transportation after conviction former amenities should be interrupted.

That Bellows was as deep in the mud as Baker was in the mire, appears too clear for argument. And yet an opinion finds its way into official Reports which places upon Bellows the stamp of judicial approval: one whose conduct finds approbation—"an honest, faithful servant." The entire decision rests upon the proposition that "It is possible (Bellows) was ignorant of the fraud that was being practiced upon the patients at the hospital." Here is recognition by the majority that fraud *was* being prac-

ticed; and yet Bellows, superintendent and generalissimo at large, money-carrier, mortgage-maker, and the executor of company notes, saw nothing, heard nothing, sensed nothing.

It is obvious, at least by analogy, that if the majority believed Bellows did not come into court with clean hands he would have no standing; and such, of course, is true.

But what conduct, may I respectfully ask, would be required in the circumstances of this case to tarnish the palm and begrime the fingers of Norman Baker's associate?

Results in affirming the appeal show that fifteen years as the agent, associate, manager, superintendent, financial expert, and close personal friend are not sufficient.

We know that being secretary of a corporation he helped denude did not arouse his suspicions that all was not well with the Baker line.

It is equally certain that Bellows' little journey to Laredo, bearing the financial balm of Gilead, his jail-house conversations, and his relationship to all that was going on—we know judicially that the hand of Esau was not confused with the voice of Jacob.

Again, may I pleadingly ask, what act upon the part of Baker would have awakened Bellows from his drowsiness?

"He who comes into equity must come with clean hands." Pomeroy, Vol. 2 (5th Ed.), p. 90. Another expression is: "He that hath committed iniquity shall not have equity"; and again: "No right of action shall arise out of an immoral cause." Apropos of the situation with which we are dealing is the rule that if both parties to litigation are equally at fault, the defendant's position is the stronger.

The situation here is that one wrongdoer is recouping from another's gains, implemented by the courts.

In answer to a newspaper reporter's question, the late Oliver Wendell Holmes, while a justice of the Supreme Court of the United States, said: "When I write a majority opinion I *think* I am right; when I write a dissenting opinion I *know* I am right."

So, here, there is the abiding conviction—although I am a lone dissenter—that the majority opinion departs radically from the clean hands doctrine, and that it makes available to participants in Baker's criminal transactions facilities of a court of equity which should remain inviolate.

I would dismiss the complaint for want of equity.

In Testimony That the above is a true copy of the dissenting opinion of the Chief Justice of the Supreme Court, in the case therein stated.

I, C. R. Stevenson, Clerk of said Court, hereto set my hand and affix the Seal of said Court at my office, in the City of Little Rock, this the 22 day of July, A. D. 1943.

(Seal)

C. R. Stevenson,
Clerk,
By A. G. Sadler,
D. C.

Majority Opinion.

In the Supreme Court of Arkansas. Norman Baker, Norman Baker, Inc., a Corporation, and Thelma Yount, Appellants, vs. Dortha Bellows, Executrix of the Estate of R. A. Bellows, Deceased, Appellee. No. 6985. Opinion delivered March 1, 1943.

Appeal from Carroll Chancery Court, Western District. Hon. Lee Seamster, Chancellor.

Affirmed.

Carter, J.

R. A. Bellows brought this suit during his lifetime, but died during the pendency thereof. The cause was re-

vived in the name of Dortha Bellows, as the executrix of his estate. Bellows was brought to Arkansas by Norman Baker to help organize and run a hospital, induced by Baker's promise to give Bellows an interest in the business. Bellows alleged that in settlement of this obligation, Baker promised to pay him \$25,000. A judgment was entered below in favor of the executrix in the sum of \$24,500 against Norman Baker, individually, and against Norman Baker, Inc., an Arkansas corporation. At that time there was \$8,935.25 in the registry of the court in this cause, and the decree ordered that this be paid over to the plaintiff to be credited on the judgment, leaving a balance of \$15,564.75. Said balance was declared a first lien on certain property at Eureka Springs, Arkansas, which had been conveyed to the defendant, Thelma Yount, by Norman Baker, Inc. It was decreed that if said balance be not paid said property be sold to pay the same. This lien was declared to be prior and paramount to any right, title, interest or equity of the defendant, Thelma Yount. Norman Baker, individually, Norman Baker, Inc., and Thelma Yount have appealed.

Two questions are presented: first, whether R. A. Bellows was entitled to recover judgment against Norman Baker and Norman Baker, Inc., and second, whether he was entitled to collect this judgment out of the property which had been conveyed by Norman Baker, Inc., to Thelma Yount, legal title to which is vested in her.

Many of the facts are in dispute, but the statements made here are, we find, in accordance with the preponderance of the evidence. The record is very voluminous, the abstract of it consisting of 486 printed pages. It would serve no purpose to review in detail the conflicts of this evidence, and we shall simply state our conclusions therefrom.

Norman Baker, a former vaudeville actor, settled in Muscatine, Iowa, and engaged in several successful enterprises. Among other interests was a radio station at that place which he used to advertise his other enter-

prises, particularly a large retail store. R. A. Bellows, then a barber, was hired by Baker about 1926, and eventually became superintendent of all of the Baker enterprises. About 1929 or 1930, Baker began to promote a cancer cure. He opened a hospital or institute at Muscatine for treating cancer, which treatment and hospital he advertised extensively over the radio. Bellows was put in charge of the hospital, which was very profitable.

Criminal charges were filed against Baker for operating the hospital without a license to practice medicine, and he paid a heavy fine and served one day in jail. In 1931, Baker was enjoined from operating the hospital. Thereafter it was leased, or conditionally sold, to various of Baker's doctors who continued to operate it and to give the Baker cancer treatment. Bellows continued as superintendent. The radio advertising campaign was continued under Baker's direction. Apparently all the profits were paid to him for such advertising. Baker eventually lost his broadcasting license, and, about 1931, he went to Nuevo Laredo, Mexico, and built a very powerful broadcasting station—one of the most powerful in the world. He organized a Mexican corporation to obtain the license and operate the station. The Baker cancer cure continued to be advertised over it. It was stated in argument that out of more than \$700,000 which this station took in for its services, all but about \$2,000 came from the Baker hospitals—from the cancer cure business.

Baker's trusted assistant, Thelma Yount, was placed in charge of the radio station and of the Mexican corporation which owned it. She organized an advertising agency in Laredo, Texas, which she later incorporated as the Globe Advertising Agency. The Baker hospitals had this agency handle all their advertising with the radio station and the agency got a commission. The largest part of the income of the hospitals was spent for advertising through this agency and over this radio station.

In 1937, Baker bought a hotel in Eureka Springs, Arkansas, taking title in the name of Norman Baker, Trustee, for the purpose of organizing a hospital there for cancer treatment. He caused a corporation to be formed, under the name of Norman Baker, Inc., to own and operate this hospital. Plaintiff Bellows was then in Muscatine, Iowa, helping run the cancer cure business there. That business was then being operated by one of Baker's doctors, Dr. Statler, either as Baker's lessee or as his conditional vendee. Baker brought both Statler and Bellows to Eureka Springs to run the new hospital. Baker was not nominally a stockholder, officer or director, but he was in absolute control of everything that was done. A tremendous advertising campaign was conducted under Baker's directions, both over the radio and through the mails. All the advertising went through the Globe Agency at Laredo, Texas, and most of it went to the Baker radio station. A large part of the advertising consisted of the broadcast of speeches by Baker.

In September, 1939, Baker, Bellows and Statler were indicted for using the mails to defraud in the promotion of this cancer cure, and were convicted. See *Baker v. United States*, 115 F. 2d 533 (8th Cir., 1940), where a description of their cancer cure may be found.

The Chancellor filed written findings in this case. Among other things he found that Bellows came to Eureka Springs under a promise from Baker that plaintiff was to "receive a fixed salary and an interest in the business. As evidence of this fact, he was given two shares of stock in the original corporation, one share issued to himself, and one to his wife. At that time only a few shares had been issued." Without reviewing the evidence, we hold that this finding was supported by the preponderance of the evidence.

It was Baker's habit to keep as little cash in bank accounts as possible. No considerable balances were allowed to accumulate. When the balance got much over

\$5,000 the excess was drawn out in cash—mostly in bills of large denominations. These were secreted in the hospital, where there were several safes—some of them hidden safes. About once a month, or once every two months, Thelma Yount came from Laredo to Eureka Springs and collected large amounts in cash. This seems to have been retained by her in cash—not deposited anywhere. Sometime in 1939, according to the contention of appellants, there was an alarm over a possible revolution in Mexico and large amounts in cash were allegedly returned to Eureka Springs. In October, 1939, after the indictments were returned, Baker, explaining he feared a search warrant might be issued to search the hospital, had Bellows and his wife take to Thelma Yount in Laredo, Texas, the sum of \$572,000 in currency. She returned to San Antonio with Bellows and paid \$128,000 of this cash to Fenner & Beane to pay the balance due on some stocks, allegedly bought for the Mexican corporation.

The preponderance of the evidence shows that, no matter through what agencies, corporate or human, he operated, Baker was the one who controlled and did everything. He was not openly a stockholder of Norman Baker, Inc., the Eureka Springs hospital corporation, but he controlled all its activities and no one else had any say about it. The officers and directors were his servants and agents who did whatever he said and did nothing except what he said. The same is true of the Mexican radio corporation. Miss Yount's advertising agency was, we believe, nothing more than an *alter ego* for Baker. The Chancellor found, as to Baker: "He conducted the whole show, through his employees and in the name, at times, of his different corporations. It was possible for him to show on the books of his American corporations a loss, and have the funds appear to be transferred to his Mexican corporation, and still keep the income in his pocket. This is evidenced by the fact that after his indictment at Little Rock, in September, 1939, he had in cash in Eureka

Springs \$572,000, and to avoid the possibility of having that much money found there, he secretly caused it to be taken to Old Mexico and delivered to Thelma Yount, one of his trusted employees and no doubt his financial confidant. It is strange that dividends were never paid by any of his corporations. They would operate so long as needed, and surrender their shares. His lawyer keeps all these records for his corporations. More than \$100,000 of this money delivered to Thelma Yount in Mexico was turned over to Fenner & Beane, brokers for investments in various stocks of corporations in this country in the name of his Mexican corporation. They admit now owning in this way at least \$250,000 worth of such stocks. The rest of the money is somewhere in hiding and no doubt in a place where only Mr. Baker and some one of his trusted employees, possibly Miss Yount, can get to it. This money was evidently a part of the profit Norman Baker had made from the patients of Norman Baker, Inc. I say that because of the enormous amount of money received from the patients at Eureka Springs, as compared with the legitimate expenses in conducting the enterprise."

The facts, as we get them from a study of the testimony, are that the sole actor in all these enterprises was Norman Baker. He used his servants, including Bellows, in any manner he saw fit. He made them stockholders or directors of his corporations—sometimes without their knowledge. He took their stock away when he saw fit. He used his corporations likewise. Norman Baker, Inc., operated the hospital and took in the money from the deluded sufferers who came there for treatment. Most of the money was spent on advertising. Baker's servants in the advertising agency contracted for the advertising and did what advertising work Baker himself did not do. The agency thus drew off the receipts of the hospital. Baker's *alter ego*, Thelma Yount, drew off a profit and the balance of the money then went to his Mexican radio

corporation. Baker sat in his suite of rooms in the hospital, surrounded by his hidden safes, and operated everything over a teletype connection with Thelma Yount at Laredo—this means of communication being selected because of its guaranteed privacy. The profits which end up in the hands of the Mexican corporation disappear, in cash or in stocks, into lock boxes or other hiding places. While Baker was in jail pending his appeal he wrote to Thelma Yount: "May be best to get any of the stock and bonds in Canadian lock boxes. I would not want the money anywhere but in safety deposit boxes, if I go on up. Event of your death while I am in prison what in hell would happen? * * * Lots of love and kisses."

After the conviction of Baker and Bellows and Dr. Statler, they were held in the Pulaski county jail while application was made for bond pending their appeal Baker informed Bellows and Statler he wanted them to reopen the hospital when they got out. Both refused to have anything more to do with it. They both held stock in Norman Baker, Inc., the certificates of Bellows, at least, having been indorsed in blank when issued and placed in Baker's possession. After Bellows and Statler refused to continue with the hospital, Baker told them that he had directed that their shares be transferred to his name. Bellows shortly thereafter demanded a settlement of his interest in the business. He had been promised an interest when he was brought to Eureka Springs. There were six persons present in the jail when the settlement was agreed upon. The testimony as to what was said and done is in irreconcilable conflict. This conflicting testimony takes up a larger part of the voluminous record. The preponderance of the evidence supports the Chancellor's finding that Norman Baker agreed to pay Bellows \$25,000 and that Thelma Yount was then directed by Baker to take care of it and not bother him anymore about it. Some time later the Bellows stock was trans-

ferred and Bellows was notified by letter that he was no longer connected with the hospital corporation.

Thereafter Thelma Yount gave Bellows \$500 which he said was to apply on the settlement. When bond was fixed at \$5,000 for Bellows and \$3,000 for Statler, Baker sent Yount to get the money from one of his safes. She told Bellows not to worry about his bond, that he had money coming to him and she would put it up. She got the money and put it up with the surety company as collateral for the bond, and took a receipt from the company showing Bellows had put up the money and was the owner thereof. Bellows was not present. He was then in jail. Later she had the form of receipt changed to show that Norman Baker, Inc., owned the money.

The trial court found that these part payments and the transfer of the stock took the transaction out of the statute of frauds. There is no argument here that this finding is not correct, although there is strong contention that the facts on which the legal conclusion is based are not true. The statute of frauds was not pleaded.

It is claimed that in May, 1939, Thelma Yount loaned \$5,000 to Norman Baker, Inc., that in June she loaned it another \$5,000 and that in September, 1939, she loaned it \$20,000. This last loan was just about the time of the indictment and shortly before Norman Baker sent \$572,000 in currency from Eureka Springs to Thelma Yount at Laredo, Texas. In September, the three loans were put in one note and a mortgage to secure it was given on the Eureka Springs properties held in the name of Norman Baker, Inc. Some defect was found in this mortgage and another was executed to replace it in December, 1939. This was signed by Bellows as secretary of Norman Baker, Inc. In October, 1940, all of this property was deeded to Thelma Yount in satisfaction of this alleged debt. This property was attached in this suit, the attachment was sustained, and this is the property which was ordered to be sold to satisfy the judgment against Baker and Norman Baker, Inc.

In connection with the making of the appeal bonds, Norman Baker caused about \$9,000 to be placed in the hands of the National Surety Company to secure it in making the bonds. Garnishment was issued and the surety company paid \$8,935.25 into court. It is claimed this money was loaned by Norman Baker to Norman Baker, Inc., and was its property. This is the money which the clerk was ordered to pay to plaintiff on her judgment.

In our opinion the evidence warranted the findings by the Chancellor that plaintiff was entitled to judgment for \$25,000, less the \$500 paid by Yount, against Norman Baker, that Baker had requested plaintiff to render services and had promised to see that plaintiff received an interest in the business as part compensation therefor; that plaintiff rendered the services and that in settlement of plaintiff's claim for compensation, Baker agreed to pay him \$25,000, and told Thelma Yount to get it for him.

The Chancellor also was correct in holding that plaintiff was entitled to enforce this judgment against the properties of Baker which can be reached in Arkansas, being the properties the legal title to which was formerly held by Norman Baker, Inc., but which had been first mortgaged to and later conveyed to Thelma Yount. The fact that Norman Baker, Inc., was legally incorporated and enjoyed under the law a separate legal personality, and the fact that Thelma Yount is a natural legal person, both of whom could own property separate and apart from Norman Baker, are immaterial. As stated, the preponderance of the evidence shows that everything that was done in this whole enterprise was done by Baker and everything that was owned was owned by him. The fact that he used servants and employees as the nominal stockholders of his corporations or as the nominal owners of his properties cannot prevent the court from seeing the true facts and from determining the rights of the parties on the basis thereof.

We see no need for discussing the question when

the courts may or may not disregard the corporate fiction and pierce the veil of corporate entity, nor as to when persons may be treated as trustees *ex maleficio*. Norman Baker's corporations and employees, under the facts here, did nothing except to hold the naked legal titles for him and in our opinion such devices should be wholly disregarded.

Norman Baker, Inc., took in the money. Baker himself, having been in trouble once for running a hospital without a license to practice medicine, was not a stockholder nor an officer. He ran the business however through his faithful servants, Statler and Bellows, whose stock certificates, indorsed in blank, were in Baker's hands from the date of issuance and which he took from them when they refused to continue to do his bidding after they had been convicted and sentenced to the penitentiary for carrying out his orders. Baker drained off all the profits to an advertising agency run by others of his faithful servants—and none of his servants was more faithful than Miss Yount who was in charge of this agency. Baker in turn drained off most of the money from the agency to his Mexican corporation, and we find Miss Yount the custodian of, and the only person knowing the whereabouts of, the cash and securities which represent the final results of these various activities and manipulations—holding them for Baker. When Norman Baker, Inc., paid the advertising agency, it was Baker paying Baker; when the agency paid the radio station, it was Baker paying Baker; when Yount loaned to Norman Baker, Inc., it was Baker lending to Baker and taking a mortgage from Baker to Baker to secure the loan; and when Norman Baker, Inc., conveyed to Yount, it was Baker conveying to Baker. Plaintiff has a judgment against Norman Baker and is entitled to recover it out of any of Baker's property, no matter under which of his various aliases he holds title thereto.

The question in this case which has given us more concern than any other is whether plaintiff has come

into court with clean hands. The case, however, must be tried on the record made in the lower court.

In the lower court, all of the parties insisted that they all acted in good faith throughout these enterprises. The appellants, who are going to be hurt by our acceptance of their statement as true, have specifically stated in their briefs that Bellows had the utmost faith in the effectiveness of the Baker treatments administered at the Baker hospitals. His act in carrying over half a million dollars for Baker from Eureka Springs to Laredo, after the indictments, was the act of an honest and faithful servant and does not comport with the actions of a crook. Many ignorant people believed in this cancer cure. It is possible that Bellows did—at least appellants ask that we determine their rights upon the assumption that Bellows so believed. Bellows was an ignorant country barber when Baker first hired him. It is possible that he was ignorant of the fraud that was being practiced upon the patients at the hospital. For this reason the court is of the opinion that it would not be justified in finding from the record that his hands are not clean or in setting aside, on such basis, the decree in his favor.

Affirmed.

Griffin Smith, C. J., dissents.

In Testimony That the above is a true copy of the opinion of the Supreme Court, in the case therein stated.

I, C. R. Stevenson, Clerk of said Court, hereto set my hand and affix the Seal of said Court at my office in the City of Little Rock, this the 22 day of July, A. D. 1943.

(Seal)

C. R. Stevenson
Clerk
By A. G. Sadler
D. C.

Will this court now please make a careful persual of petitioners' "petition to reform" as applying to these two opinions. That petition is now filed before the Arkansas Supreme Court, for the next October term.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. Article VII of the Bill of Rights of the Constitution of the United States, provides for and guarantees the rights of trial by jury. Thus:

"In suits of common law where the value in controversy shall exceed twenty dollars the rights of trial by jury shall be reserved * * *"

In this cause, as previously explained, petitioner was denied trial by jury, because was refused conference with attorneys at Pine Bluff jail, and after in prison was unable to receive a different attorney than the ones employed by other defendants and obviously could not, while a prisoner, make proper arrangements or proper presentation to the court to secure a separate representative to present petitioner's case for trial by jury. Besides, presumably, other defendants rested their decision and the attorneys also, on fact that petitioner was denied right to testify in court before a jury. *Thus by Federal obstruction* to justice, petitioner was deried his Constitutional rights.

2. Article XIV of the Constitution of the United States guarantees life, liberty and property rights, thus:

"* * * nor shall any state deprive any person of life, liberty or property * * *"

Petitioner contends that the opinion and judgment in this cause, denies him and defendants of their Constitutional property rights, because, all corporate defendants show by the preponderance of the evidence that each corporation was legally formed and for many years, as far back as 1931, have conducted their corporate businesses honestly and legally *and none of such evidence* was contradicted.

That plaintiff was an official of said corporations, of all, except the Globe Advertising Agency, and if same were organized or operated as a fraud, surely plaintiff would have been a part of it and comes into court with "unclean hands"; and that said judgment is purely confiscation of property rights because it sets aside a legal mortgage properly executed and recorded for a loan of \$30,000 cash and business credits of about \$70,000 from Thelma Yount, to the Norman Baker, Inc., of Arkansas, and that said loan was secured by the plaintiff from Thelma Yount, and plaintiff was the same person who executed the mortgage as security from the Norman Baker, Inc., for said loan. That said property rights of Yount was voided by the court and denied defendant her Constitutional property rights.

Therefore for a court to set aside a mortgage just long enough for plaintiff to attach a levy upon same to collect his judgment, is positive confiscation of property rights. Especially is this all the more obviously true, because the court *did not void the mortgage and the deed* that was later executed, but set it aside on assumption only (not based upon the undisputed evidence), assuming all was owned by Baker, such is flagrant disrespect for property rights.

3. A fair and impartial trial as provided by law was not accorded petitioner. His rights were violated because he was denied:

A. The right to appear in court to testify in his own behalf.

B. The right to face the accuser and his witnesses.

C. The right to free and unobstructed conference with counsel.

D. The right to a trial by jury and of "severance."

E. The right to correspond with or consult with the attorney in charge of his files, evidence and other trial data to enable him to properly prepare his defense.

4. *Illegal Evidence.* The courts have many times reversed cases because of illegal evidence. There are recent citations of such, by the appellate courts. One being the recent reversal in the case of the defendants who were tried for treason in Chicago.

In this cause, plaintiff read into the records, telegrams and a letter, alleging same were written by petitioner while in the Pine Bluff jail. Such telegram to have been seized by Federal officials from petitioner while a Federal prisoner, and therefore same became confidential and private holdings of the Federal Court officials, and any "loaning" of same by said Federal officials to private parties to be used as evidence against a Federal prisoner in a civil suit, is illegal and all such conspirators liable to punishment. Thus petitioner's Constitutional rights were violated as to property and other rights by what appears to be a conspiracy (See attached Petition for Rehearing, pages 3-4-5). Such tends to force a person to testify against himself.

5. Petitioner contends the denial of Petition for Removal" with no privilege of appeal from it, divested him of his rights to change of venue from the Chancery Court in an unfavorable and prejudiced district to the Federal Court, and for reasons set forth in said petition, as the amount at issue was over \$3,000.

6. Petitioner contends the service of summons upon him while in Pine Bluff, Arkansas, jail, was illegal and denied him of his constitutional rights to a fair and impartial trial because said summons was served while he was a Federal prisoner, and the summons was for a civil suit. That the officials knew at the time of service, of said summons that petitioner would be in prison and would be denied his Constitutional Rights, to appear in Court in a state case to face the accuser, or to face the witnesses, all of which was necessary because this cause was brought by plaintiff against petitioner as the most

important defendant; the one who he claimed made the alleged promise to pay and that the other defendants were mentioned merely to insure plaintiff's payment of the judgment if awarded.

7. Petitioner contends there is no justice for him in the district where said cause was tried or before the Arkansas Supreme Court, where prejudice created by press and radio by the orthodox medical groups and politicians became effective. To inform this Court of the gigantic and effective activities of his enemies to create this prejudice and public clamor, these forces, including the Time, Inc., publishers and producers of "The March of Time" news reel, assisted by Dr. Morris Fishbein of the American Medical Association, staged and exhibited a 15 minute "March of Time" news reel in which one-half of it was devoted to petitioner, and greatly libeled and slandered him and discredited his life's research work in health matters, especially regarding Cancer, and that same was based upon false statements about him being a "quack," etc. The success of his research work is known nationally and internationally and recognized by drugless doctors and their associations, in this and foreign countries.

8. Petitioner contends that any opinion (as was the majority opinion) which weighs only the evidence favorable to the plaintiff and disregards evidence favorable to the defendants, is a travesty upon justice and when such evidence relied upon for the plaintiff is of a contradictory, impeached, perjured or false nature, as the evidence in this case shows (see Petitioner's petition for rehearing and defendant's petition) such tactics are diabolical, reprehensible and violate petitioner's Constitutional Rights to a fair and impartial trial.

ARGUMENT.

Petitioner contends the "clean hands" doctrine should prevail, that confiscation of property and an opinion attacking the character of defendants when same dehors the record, pre-judges and not based upon the evidence is in direct violation of the American spirit of Jurisprudence and that the majority opinion in this case goes farther; it awards to one with unclean hands, a judgment, after the plaintiff is shown by the evidence as one giving false or perjured testimony so frail it would not hold water. His testimony shows contradiction as to the reason for his allegation that petitioner promised to pay him \$25,000. First he said "petitioner just 'promised to pay' the amount because 'he thought he had it coming.'" Then states he had 2 shares of stock in the Norman Baker, Inc., and they were worth \$25,000. Then stated petitioner promised to give him an interest in the business, that his wife was present when promise was made. But his own wife denies she ever heard such a promise.

Besides, if he did own 2 shares (which he did not pay for and same was never delivered to him), the corporation was insolvent and over \$100,000 in debt. Therefore stock was worthless.

Petitioner prays this Court will study the fact as shown by the two affidavits on pages 13-14 of "Petition for re-hearing." Here it is seen *that many months* before plaintiff brought this suit to recover \$25,000 on an alleged promise to pay him, per agreement in the Arkansas jail, that petitioner, *when plaintiff attempted to extort* that amount, and more, namely \$50,000, tried in vain by employing an attorney to seek an indictment for extortion by aid of the County Prosecuting Attorney and these affidavits prove that petitioner considered it an attempt

at extortion, instead of a "good wili" promise to pay as plaintiff alleges.

Furthermore, how can transfer of property be made to stand legally or mortgages made as security for legitimate loans, when as in this case they are lightly thrown aside without consideration and merely by assumption without respect to the evidence as in this case, without respect to the fact of evidence, *that plaintiff was the very person who arranged for the loan of \$30,000 from Thelma Yount, the same person who executed the notes and mortgage to Thelma Yount, and now, in this case, testifies the mortgage was fraudulent. If it was (which it was not), then how can a Court, with respect for justice, grant a reward to a person for committing a fraud? If it was a fraud, was not the plaintiff a part of it? Was his hands clean? Still the Chancery Court and the Arkansas Supreme Court decides otherwise, permits Thelma Yount's property to be attached, levied upon, put up for public sale, and makes nugatory every act that executed a legitimate mortgage, later a deed of the property to her, and she being forced to lose her investment. Can that be Justice? Is there no relief from such a travesty upon the courts and justice?*

Petitioner prays that this cause be reversed or remanded for new trial, and that this court will consider that by these opinions the present and future reputation of all defendants is unfairly attacked, which is ruinous to the future business prospects of all of them, and these opinions stand as a sign post to invite a continuous chain of racket suits against defendants upon the theory that any kind of an alleged claim can be collected against defendants if brought in a "political Boss district." Peti-

tioner says that already another "alleged promise to pay \$25,000 case" has already been started in the case of *Dr. Beatty v. N. Baker et al.*, by the same attorney who handled this case (Federal Court—Harrison, Arkansas), and prays "for relief from such tactics and a restoration of Justice."

Signed and sealed this 10th day of September, 1943,
by petitioner.

Respectfully submitted,

NORMAN BAKER,

*One of the Petitioners and
Without Counsel.*

